IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

Crl.MC.No. 1458 of 2007()

CRRP.22/2004 of SESSIONS COURT, KASARAGOD
MC.216/2003 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD

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PETITIONER:

N.M. ASEES, S/O.NELLIKATTA MOHAMMED,
RESIDING AT NEAR NELLIKATTA JUMA MASJID,
NEKRAJE VILLAGE AND POST, KASARAGOD TALUK,
KASARAGOD DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS:

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1. ASMINA A.N., AGED 5 YEARS,
D/O.N.M. ASEES AND N.A. NASIMA.

2. MOHAMMED AFSALUL HAQ A.N.,
AGED 4 YEARS, S/O.N.M.ASEES AND N.A.NASIMA
(RESPONDENTS 1 AND 2 ARE MINORS REPRESENTED
BY THEIR NATURAL GUARDIAN AND MOTHER
3RD RESPONDENT.)

3. N.A. NASIMA, AGED 26 YEARS,
D/O.LATE ABDULLA, RESIDING AT PERUMBALA ROAD,
NAINARMOOLA, P.O.VIDYANAGAR,
KASARAGOD TALUK, KASARAGOD DISTRICT.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1458 OF 2007

Dated this the 23rd day of May, 2007

ORDER

The petitioner is aggrieved by the concurrent direction to pay maintenance at the rate of Rs.1,500/- per mensem to his two children under Sec.125 of the Cr.P.C.

2. Paternity is admitted. That the children are residing with their mother is also not disputed. The marriage has ended in divorce. The children, through their mother, claimed maintenance alleging that the petitioner – their father, is refusing and neglecting to maintain them. They claimed an amount of Rs.1,500/- per mensem.

3. The petitioner resisted the claim for maintenance of the children on the ground that the quantum of maintenance claimed is excessive. An amount of Rs.750/- per mensem per child was directed to be paid as interim maintenance. The petitioner did not pay the amount. The petitioner did not

appear before the learned Magistrate. It is, in these circumstances, that the petitioner was set ex parte. The mother of the children was examined and her oral evidence was recorded.

4. The unchallenged evidence shows that the petitioner has the requisite means to pay an amount of Rs.1,500/- per mensem and that he is earning an income of Rs.15,000/- per mensem. No contra evidence was adduced. Accordingly, the learned Magistrate proceeded to pass Annexure-AI order which was confirmed by the learned Sessions Judge in revision under Annexure-AII order.

5. A second revision is not maintainable and that obviously is the reason why the petitioner has entered this Court through the door of Sec.482 of the Cr.P.C. What is the grievance? The short contention raised is that the quantum of maintenance awarded is excessive. It is further contended that the petitioner was not given an opportunity to adduce evidence. No other contentions are raised.

6. I find no merit in either contention as to justify the invocation of the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. The petitioner has not applied to get

the ex parte order set aside, it is conceded. Why did he not do so? No satisfactory explanation is forthcoming. If the petitioner has a grievance that he has been wrongly denied the opportunity to adduce evidence, it is certainly for him to move the learned Magistrate to get the ex parte order set aside and for permission to adduce evidence on his side. No such attempt has been made.

7. The quantum awarded is excessive, it is contended. The children are aged 5 ½ years and 4 years respectively. Their mother has been divorced by the petitioner. The amount ordered is perfectly justified by the ex parte evidence tendered by the guardian as P.W.1. The amount ordered does appear to be absolutely justified going by the unchallenged evidence about the means of the petitioner and the needs of the claimants/minor children. In any view of the matter, the quantum of maintenance does not warrant interference by invoking the powers under Sec.482 of the Cr.P.C.

8. This Crl.M.C. is, in these circumstances, dismissed.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. To Judge